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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,384	12/19/2001	Gerald James Keberlein	KCX-472 (17476)	5212

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11/22/2002

John E. Vick, Jr.
Dority & Manning, Attorneys at Law, P.A.
P.O. Box 1449
Greenville, SC 29602

EXAMINER

TRAN, KHOA H

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 11/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/025,384

Applicant(s)

KEBERLEIN, GERALD JAMES

Examiner

Khoa Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Abstract

The abstract of the disclosure is objected to because of the use of phrases which can be implied, such as "is disclosed", which should be avoided. Further, no method is being claimed. Correction is required.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). There is no antecedent basis for the claimed subject matter of "a relaxed position", "a tensioned position" and "the first and second side walls are canted towards each other", see claims 8, 12, and 30. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to claim 12, it is unclear what kind of "assist" the tabs provide or how such "assist" is provided. With respect to claim 30, the phrase "carton is capable of assuming" renders the claim indefinite because no carton has been previously positively included. Accordingly, it appears that claim 30 is

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attempting to rely on the particulars of an otherwise unclaimed element to distinguish the claimed system over the prior art.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-12, 17, and 18, are rejected under 35 U.S.C. 102(b) as being anticipated by Lane. Lane discloses a carton tray that meets all limitations of the claims. For example, the carton tray of Lane comprising a one piece blank foldable into a carton tray. The tray has a bottom panel (3), a first wall (4 and 5) and a second wall (4 and 5) connect to the edges (2) of the bottom panel (3), a first flap (11) and a second flap (11) extend over a portion of the bottom panel (3), and first and second tabs (12) secured to the bottom panel (3). See Figures 1-2.

Claim 21 is rejected under 35 U.S.C. 102(b) as being anticipated by R. B. Miller. Miller discloses a sheet material dispenser comprising a bottom panel (11) having first and second edges connect with the first and second tabs (15) that maintain the sidewalls in erect positions.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haupt in view of C. N. Cross and Lane. Haupt discloses a napkin holder comprising a bottom (11), a first outer side wall (13) facing the first flap inner side wall (14) and a second outer side wall (18) facing the second flap inner side wall (19). See Figure 1. Cross teaches a decorative holder that is foldable having a first outer side wall (34) secured by adhesives (glue or paste) to the first flap inner side wall (32) and a second outer side wall (26) secured by adhesives to the second flap inner side wall (28). Lane teaches the holder having access notches (16) and tabs (12) that extend from the first and second flaps (5) secure over the bottom portion of the panel (3). See Figure 2. Considering the disclosure of Haupt and the teaching of Cross and Lane, taken as a whole, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to manufacture the holder of Haupt from a corrugated cardboard and having the outer side wall adjoined with the flap inner side wall as taught by Cross in order to have a holder that is simple to make from a blank for the purpose of reducing manufacture costs. Further, at the time of the invention, one of ordinary skill in the art would have been motivated to provide the holder of Haupt with the provision of tabs as

taught by Lane in order to keep the side wall in an erected state because it is well-within the level of skill in the art to utilize the known features of the art for the purpose for which they are known.

Claims 23-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over as applied to claims 1-22 above, and further in view of W. G. Rockefeller. Rockefeller teaches a protective covering (34). See Figure 3. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the modified holder of Haupt with the protective cover as taught by Rockefeller in order to protect the holder from moisture absorbent.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. H. D. P. Koene, Peng, J. W. Hawks, Goetz, E. L. Humphrey, Weismantel, Meyers, Tronchetti et al., Morrow et al., Matsui, W. A. Bertram, C. J. Hall, J. P. Rosello, Proulx, Greer et al., Kuchenbecker are cited to show devices having similar configurations of design.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Thursday from 8:30 A.M. to 7:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for this Group is (703) 305-3597 or (703) 305-3598.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

If the applicant is submitted by facsimile transmission, applicant is hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and M.P.E.P. 502.02). In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check **should not be** submitting by facsimile transmission separately from the check. Responses submitted by facsimile transmission should include a Certificate of Transmission (M.P.E.P 512). The following is an example of the format the certification might take:

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(Date)

Type or printed name of person signing this certificate:

(Signature)

Furthermore, please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile

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will only cause further unnecessary delays in the processing of your application;
duplicate responses where fees are charged to a deposit account may result in those
fees being charged twice.

Khoa Tran
November 15, 2002

A handwritten signature in black ink, reading "Daniel P. Stodola". The signature is fluid and cursive, with the first name "Daniel" and last name "Stodola" clearly legible.

DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600